IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1871 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHANUBEN W/O AMRUTBHAI NARANBHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 1871 of 2001

MS DR KACHHAVAH for Petitioner No. 1

MR KT DAVE AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 06/09/2001

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution, petitioner/detenu who has been detained by the Commissioner of Police, Surat City, Surat, vide order dated January 20, 2001 in exercise of powers conferred upon him under Section 3 (2) of the

Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short) has prayed to issue a writ of habeas corpus or any other appropriate writ quashing and setting aside the impugned order of detention.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority considered the petitioner as a bootlegger within the meaning of Section 2 (b) of the Act as the petitioner is involved in five cases under the Prohibition Act which are registered against her at various police stations of Surat City and also statements of two independent witnesses which have been recorded inter alia revealed that the petitioner is a bootlegger and indulged in the bootlegging activities which are detrimental to the maintenance of public order and, therefore, it has become necessary for the detaining authority to detain her under the Act. As per the detaining authority, ordinary provisions of law were found to be insufficient to curb the anti-social activities of the petitioner and, therefore, the impugned order of detention came to be passed against her.

3. It is averred by the petitioner that relevant papers including reports of Chemical Analyser ('the C.A. Reports' for short) and the papers relating to the release of the petitioner on bail have not been supplied to her. Therefore, her right to make an effective representation as guaranteed under Article 22 (5) of the Constitution has been violated.

4. It is also averred that privilege claimed under Section 9 (2) of the Act is not genuine and, therefore, the continued detention of the petitioner is illegal. It is further averred that if the State Government had not made the reference with all the relevant materials and documents relating to the order of detention against the petitioner, to the Advisory Board in time as stipulated under the Act as the mandatory provision has not been complied with, the continued detention of the petitioner has become illegal. It is also the case of the petitioner that the petitioner has sent a representation dated February 6, 2001 to the detaining authority with a request to forward it to the State Government to consider it. But there is delay in considering the said representation by the authorities and thereby the valuable right guaranteed under Article 22 (5) of the Constitution is violated. On the aforesaid premises it is claimed that continued detention of the petitioner has become illegal and, therefore, is required to be quashed and set aside.

5. The petition is hotly contested by the respondents by filing two separate affidavits. One is sworn by J.R. Rajput, Under Secretary, Home Department, Gujarat State and another is sworn by V.K. Gupta, Commissioner of Police, Surat City, Surat.

6. The affidavit filed by Mr. B.K. Gupta reveals that C.A. Reports cannot be termed as most important, relevant and vital documents as contended by the petitioner as the same have not been considered by the detaining authority for the purpose of passing the order of detention. As the detaining authority has not relied upon the C.A. Reports, copies thereof are not supplied to the detenu. It is further disclosed that the C.A. Reports were not in existence in respect of the criminal cases registered against the detenu and, therefore, there was no question of supplying copies of the documents which were not in existence even if demanded by the detenu. It is further stated in the affidavit that the detaining authority has intimated by communication dated February 9, 2001 in respect of the representation about the demand of C.A. reports that as and when such reports will be available, the same will be supplied to her. With respect to the subjective satisfaction envisaged under Section 9 (2) of the Act, it is denied that privilege under Section 9 (2) of the Act is claimed without satisfying himself about the public interest. It is also inter alia denied that the detaining authority has not made any exercise to verify the genuineness and correctness of fear of the witnesses. It is further stated in the affidavit that statements of two witnesses whose names, addresses and occupation are not disclosed, have been recorded on January 7, 2001 by the Police Inspector, P.C.B. Surat City and the detaining authority had personally called them before him on January 16, 2001 and both the witnesses have stated before him that the statements recorded on January 7, 2001 are correct and true and because of the fear expressed by the witnesses and as they requested him not to disclose their names, addresses and occupation, their names, addresses and occupation, such details are not disclosed. It is, therefore, claimed that the powers under Section 9 (2) of the Act have been bonafidely exercised by the detaining authority for the public interest. It is also stated that the detaining authority was subjectively satisfied that more important public interest can be served by not disclosing the identity of the witnesses on account of clear, certain and eminent danger of the sources of such particular. It is further stated that the satisfaction claiming privilege is qua each statement and qua identity

of each informant. The detaining authority, therefore, urged to reject the petition.

7. So far as the affidavit filed by J.R. Rajput is concerned, he has denied all the averments and allegations made in the petition and contended that the representation dated February 6, 2001 made by the detenu was forwarded to the State Government by the detaining authority by communication dated February 9, 2001 and there is no delay in considering the representation since the same is expeditiously decided after careful consideration by the State Government. The deponent further stated that the representation dated February 6, 2001 made by the detenu to the Hon'ble Chief Minister is considered without delay by the authorities and, therefore, it is urged that the petition may be rejected.

8. Ms. Kachhavah, learned advocate for the petitioner, contended that non-supply of the vital documents, i.e., C.A. reports and papers relating to bail application pari pasu has seriously prejudiced the right of the petitioner of making an effective representation before the authority as envisaged under Article 22 (5) of the Constitution and on this sole ground the order of detention is bad in law and it vitiates the detention order. What is emphasized by the learned advocate is that the privilege under Section 9 (2) of the Act has been wrongly claimed. What is stressed by the learned advocate is that there is no separate ground of detention as averred by the detaining authority in the impugned order. According to her, bootlegging activity as defined under Section 2 (b) of the Act is the sole ground for detention and on that ground if the order is passed then the filing of complaints as well as recording of statements of two witnesses cannot be considered as separate grounds for detention and, therefore, there is no question of invoking the provision of section 6 of the Act. It is emphatically contended that while passing the order of detention, the detaining authority has considered a less drastic remedy under Section 57 of the Bombay Police Act, 1951 though section 57 of the Bombay Police Act is not applicable in the case of the petitioner as it was not necessary to consider the same in view of the fact that no legal step was available under the said provisions of the Act. It is also pointed out by the learned advocate that there is delay of 5 days in communicating the order passed on the representation made by the petitioner which is also fatal and, therefore, the said fact also vitiates the order of detention and on the aforesaid premises she contended that the order is bad in law which is required

to be quashed and set aside by setting the petitioner at liberty forthwith.

9. In support of her contention she placed reliance on the following decisions:

(1) Ramesh @ Bhangari Babaji Thakor (Zala) v. State of Gujarat and others, 2000 (2) GLR 1777.

(2) Amrutbhai Ramabhai Vagri v. Commissioner of Police, Ahmedabad City, 1994 (2) GLH (U.J.) 5.

(3) A. Sowkath Ali v. Union of India and others, AIR 2000 SC 2662.

(4) P. Sarvanan v. State of Tamil Nadu and others, 2001 AIR SCW 2413.

(5) M. Ahamedkutty v. Union of India and another, (1990) 2 SCC 1.

(6) Yakub Ismail Chhipa v. The District Magistrate, Bharuch, 1996 (1) GLR 4.

(7) Lataben Ramchandra Uttekar (Miss) v. Commissioner of Police, Surat, 1995 Cr.L.R. (Guj.) 58.

10. Mr. K.T. Dave, learned AGP for the respondents - State and the detaining authority, with all vehemence at his command argued that so far as the contention with respect to non-supply of the documents, that is, C.A. reports as well as papers relating to bail application, is concerned, they are not vital documents. He submitted that the C.A. reports were not in existence at the time of passing the order of detention and they were not considered by the detaining authority for passing the order of detention. Therefore, those documents were rightly not supplied to the detenu and even if demand was made for the same there was no question of supplying those documents to the detenu. He tried to justify the privilege claimed by the detaining authority under Section 9 (2) of the Act with regard to non-disclosure of the names, addresses and occupation of the witnesses whose statements are recorded. According to him, paragraph 12 of the affidavit in reply sworn by B.K. Gupta succinctly explains why the privilege under Section 9 (2) of the Act is claimed. Therefore, according to him, since the privilege claimed under Section 9 (2) of the Act has been properly explained, continued detention cannot be held to be illegal. He emphatically contended that the petitioner is involved in bootlegging activities and five prohibition cases are registered against her. Besides this, statements of two witnesses also came to be recorded. Therefore, according to him, five cases registered against the detenu under the Prohibition Act and the statements of two witnesses themselves are separate grounds and in view of the judgment of the Full

Bench of this Court in the case of Paresh Ramanlal Amin v. State of Gujarat, rendered on March 31, 2000 in Special Criminal Application No. 646 of 1994 the detenu has to satisfy that the grounds of detention are not severable and accordingly such order of detention shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are (i) vague, (ii) non-existent, (iii) not relevant, (iv) not connected or not proximately connected with such person, or (v) invalid for any other reason whatsoever. Mr. Dave lastly contended that there is no delay in sending the communication to the petitioner by which the petitioner was conveyed about rejection of her representation as according to him, 5 days delay is not a delay in the eyes of law. On the aforesaid premises, he urged that there is no merit in the petition and it may be rejected.

11. I have considered the submissions advanced by he learned advocates appearing for the parties. I have also perused the averments made in the petition and the annexures thereto, the impugned order by which the petitioner came to be detained by the detaining authority and the judgments cited at the bar.

12. The order of detention dated January 20, 2001 indicates about the involvement of the petitioner in bootlegging activities and, therefore, the detaining authority considered her as a bootlegger and in view of the registration of five prohibition cases against her and on the basis of the statements of two witnesses recorded on January 7, 2001 by the P.I. P.C.B. Surat City, the detaining authority thought it fit to detain her. It further indicates that the activities of the petitioner have become an obstruction to the maintenance of public order and ordinary provisions of law are found insufficient and since she continued her aforesaid activities there was no other alternative but to pass the order of detention against her.

13. In M. Ahamedkutty's case (supra), the Supreme Court considered the effect of non supply of the documents. In that case, documents like bail application and the bail order were not supplied by the detaining authority to the detenu and, therefore, the Supreme Court held that right to make representation enshrined under Article 22 (5) of the Constitution is violated and continued detention was held to be illegal.

14. This Court in Amrutbhai's case (supra) held that non-supply of C.A. reports to the detenu though demanded by him is also a vital factor to be considered since it

infringed the right of the detenu to make effective representation under Article 22 (5) of the Constitution.

15. Mr. K.T. Dave, learned AGP tried to justify the order of detention by contending that the documents demanded by the detenu were not in the custody of the detaining authority and the detaining authority has not relied upon them and, therefore, they were not supplied to the detenu. With regard to the ratio laid down in M. Ahamedkutty's case (supra) he contended that in that case no such contention was raised by filing affidavit in reply. However, in the instant case the detaining authority has stated on oath that those documents were not relied upon by him and they were not existing at that time and, therefore, there was no question of supplying them to the detenu.

16. On this point there is catena of decisions of this Court wherein on similar fact situation this Court has held that irrespective of the fact whether the detaining authority has considered that C.A. report or papers of bail order, non-supply of those documents vitiates the order of detention and, therefore, on this ground, I have not been able to persuade myself to agree with the submission advanced by Mr. Dave. According to me, those documents, more particularly the C.A. reports, are very vital documents as on the basis of the said reports it can be examined whether the samples collected by the investigating officer while registering complaints under the Prohibition Act in fact contained alcohol or not and if ultimately the C.A. reports reveal that the samples collected do not contain alcohol in that case it can be said that the petitioner is not involved in prohibition cases and is not a bootlegger within the meaning of Section 2 (b) of the Act. Therefore, in my view, non-supply of such documents irrespective of the fact whether they are considered at the time of passing the order of detention or not, are vital documents and non-supply of such documents vitiates the continued detention of the detenu.

17. The detaining authority has passed order of detention also on the basis of statements of the two witnesses recorded on January 7, 2001 which was verified by the detaining authority on January 16, 2001 and claimed privilege under Section 9 (2) of the Act by not furnishing the names of the witnesses. Mr. Dave tried to justify the privilege claimed under Section 9 (2) of the Act by not disclosing the names of the two witnesses as the detaining authority has succinctly stated as to why names, addresses and occupation of the witnesses are

not furnished to the detenu.

18. Mr. Dave cited the judgments of this Court in the case of Mangabhai Chandubhai Vasava v. State of Gujarat and another, 1993 (1) GCD 554 (Guj.) and Alarakha @ Kadi Alibhai Sepai v. State of Gujarat and another, 1993 (1) GCD 685 (Guj.) to canvass the proposition that each offence registered against the petitioner and the subsequent statement recorded by the detaining authority are separate grounds and hence unless the petitioner satisfies that on each of the ground her right to make effective representation is violated, the order of detention cannot be called to be bad in law.

19. Now the question that would arise is as to whether the statements of two witnesses said to be distinct ground for detaining the petitioner and if it is separate ground whether provisions of Section 6 of the Act can be pressed into service in the present case?

20. Ms. Kachhavah contended that the five offences registered against the petitioner under the Prohibition Act and the statements of two witnesses are composite ground and, therefore, question of severability of ground as provided under Section 6 of the Act would not apply. To canvass this proposition she pressed into service the judgment of the Supreme Court in the case of A. Sowkath Ali v. Union of India and others, AIR 2000 SC 2662. In the said judgment the Supreme Court has considered the detention order under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act ('COFEPOSA' for short) and the applicability of Section 5A of the COFEPOSA and it was held that if the order of detention was passed on one composite ground, different numbers of grounds of detention were only paragraphs narrating facts with details of documents relied on and, therefore, question of severability under Section 5A of the COFEPOSA applies where the detention is based on more than one ground. It is also further held that the question of severability under Section 5A of the COFEPOSA was not raised by the State in any of the counter affidavits.

21. I have considered the judgments relied upon by Mr. Dave and Ms. Kachhavah. So far as the judgment relied upon by Ms. Kachhavah is concerned, in that the order of detention was passed on composite ground and there the State had not filed any counter affidavit raising question of severability under Section 5A of the COFEPOSA and in that circumstances the Supreme Court has held that question of severability would not arise.

22. In Mangabhai's case (supra), this Court has held that it is clear from the provision of Section 6 that the Government or the officer making the order of detention shall be deemed to have made the order of detention under the said Section after being satisfied as provided in that section with reference to the remaining four grounds. In the said case, there were in all nine cases under the Bombay Prohibition Act, 1949 against the petitioner. Assuming that the 5 cases wherein the portioner was acquitted would not have been considered by the detaining authority while passing the impugned detention order, there were still remaining four cases on the basis of which the detaining authority shall be deemed to have made the impugned detention order under section 3 of PASA Act after being satisfied with reference to remaining four cases which would be pending against the petitioner at the time of passing the impugned detention order in the grounds supplied to the petitioner. Besides, there were also four statements of witnesses stating that the petitioner was indulging into the activities as bootlegger and the said statements were taken into consideration by the respondent No.2 while passing the detention order. In this view of the matter, the impugned detention order cannot be said to be inoperative merely because five cases of acquittal were not taken into consideration by the detaining authority at the time of passing the impugned order.

23. Similarly in Alarakha's case this Court has held that when there are six deemed separate orders of detention against the petitioner in respect of six grounds out of which one ground is not available as the relevant material was not placed before the detaining authority; to that extent of the order passed on the basis of C.R.No. 39 of 1990 subjective satisfaction will be vitiated, but that will not affect the subjective satisfaction arrived at by the detaining authority in respect of other five different grounds.

24. In view of the discussion made hereinabove and in light of the judgments referred to above, I am of the opinion that so far as the present case is concerned, against the petitioner five cases are registered under the Prohibition Act and statements of two witnesses are also recorded for which privilege is claimed under Section 9 (2) of the Act. Therefore, according to me, all these are separate and distinct grounds. I have held that so far as cases registered under the Prohibition Act are concerned, on account of non-supply of the documents relating to those cases registered against her,

irrespective of the fact whether they were considered at the time of passing the order of detention or not, the order of detention vitiates and, therefore, now the question that would arise is as to whether by not disclosing the names of the witnesses, privilege claimed under section 9 (2) of the Act was right or not? As stated in the earlier paragraphs, the detaining authority in para 12 of the affidavit in reply has stated under what circumstances identity of the witnesses are not disclosed and I am fully satisfied with the explanation offered by the detaining authority in his affidavit. Therefore, I hold that the privilege under Section 9(2) of the Act is rightly claimed.

25. After having held that all the grounds mentioned in the detention order are separate and distinct the question that falls for consideration of this Court is whether the provisions of Section 6 of the Act can be attracted or not. Mr. Dave placed reliance on the Full Bench decision of this Court in Paresh's case (supra). In the said case this Court has held that section 6 of the Act cannot be held to be inconsistent with the previsions contained in Article 22 (5) of the Constitution and applicability of Section 6 of the Act does not impinge upon the scope and sphere of operation of Article 22 (5) of the Constitution and one ground of detention which is non-existent as it is vague would not affect the right to make representation under Article 22 (5) of the Constitution.

26. In view of the ratio laid down in the judgment of the Full Bench of this Court, there is no manner of doubt that the provisions of Section 6 of the Act can be invoked if there is more than one ground of detention and if the petitioner fails to establish how each ground vitiates the order of detention and the detention order should be held invalid.

27. At the risk of repetition I must say that so far as the cases against the petitioner are concerned, the grounds of detention manifest that the petitioner has involved in five cases under the Prohibition Act. Besides this there are statements of two witnesses against her. Therefore, in view of the judgments of this Court in Mangabhai's case (supra) and Alarakha's case (supra) all the grounds of detention are separate and distinct and in view of Section 6 of the Act, the petitioner has to satisfy how each ground of detention is vulnerable and bad in law. So far as the statements of two witnesses are concerned, the petitioner is unable to persuade this Court how the privilege claimed is wrong

and how that ground is vague. Ms. Kachhavah made feeble effort to show that the statements came to be recorded on January 7, 2001 which were verified by the detaining authority on January 16, 2001 and in the verification part, the date of recording the statement which is January 7, 2001 is not mentioned and, therefore, it clearly reflects non-application of mind on the part of the detaining authority. I am unable to agree with he aforesaid submission made by the learned advocate for the petitioner because in verification part only the date (7) is missing. Otherwise the detaining authority has mentioned that the said statement was verified from the maker of the statement. Therefore, I am of the view that so far as the statements of two witnesses are concerned, as same bear the signature of the detaining authority, there is no illegality and the petitioner is unable to convince this court how the grounds are vague.

28. Lastly it is submitted that there is delay of 5 days in sending the communication to the petitioner after rejecting her representation. According to the learned advocate for the petitioner, the representation was sent on February 6, 2001 which was received by the authority on February 7, 2001 and rejected on February 8, 2001 which was forwarded to her on February 13, 2001.

29. I have perused the affidavit of Mr. J.R. Rajput, Under Secretary, Home Department. In paragraph (7) thereof it is stated that the representation was considered as early as possible and there was no delay in deciding the representation which was forwarded to the petitioner on February 13, 2001.

30. In this connection, it would be profitable to refer to the judgment of the Supreme Court in the case of Smt. Kamlabai v. Commissioner of Police, Nagpur and others, JT 1993 (3) SC 666 wherein the Supreme Court has held that delay in considering the representation by itself is not fatal if there is explanation. Short delay cannot be given undue importance having regard to the administrative actions.

31. Having regard to the facts and circumstances of the present case and considering the averments made in paragraph 7 of the affidavit in reply of Mr. J.R. Rajput, there is no delay in considering the representation. On the contrary, the representation was considered on the next day itself which was conveyed to the petitioner and, therefore, according to me the last submission made by Ms. Kachhavah also fails and accordingly is rejected.

32. On over all view of the matter, so far as the five cases registered against the petitioner under the Prohibition Act are concerned, the petitioner's right to make effective representation on account of non-supply of the documents like C.A. reports and application of bail and its order which are vital documents, is violated and, therefore, it vitiates the continued detention of the detenu. However, so far as other ground of detention, that is, statements of two witnesses are concerned, the privilege is rightly claimed and grounds of detention are severable and the learned advocate for the petitioner is unable to persuade this Court how this ground is vague. Therefore, order of detention is sustainable.

33. In view of the above discussion, I am of the opinion that there is no substance in the petition and it is liable to be rejected.

34. For the foregoing reasons, the petition fails and accordingly it is rejected. Rule is discharged. No order as to costs.

(A.M. Kapadia, J.)